

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE MANUAL

TRANSMITTAL SHEET

Release No. 132

September 30, 1987

SUBJECT: Administrative Series
Part 370 Personnel MMS Addition to FPM/DM
Chapter 735 Employee Responsibilities and Conduct
Subchapter 23 - Outside Work or Activity

EXPLANATION OF MATERIAL TRANSMITTED:

This subchapter establishes parameters for acceptable outside work activities for Minerals Management Service employees and provides procedures for requesting permission to engage in such activities.


Director

FILING INSTRUCTIONS:

REMOVE:

None

INSERT:

<u>Part</u>	<u>Chapter</u>	<u>Pages</u>	<u>Release</u>
370	735		132
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OPR: Ethics Staff
Personnel Division
Office of Administration

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Subchapter 23 - Outside Work or Activity

1. Purpose. To establish parameters for acceptable outside work activities for Minerals Management Service (MMS) employees and to provide procedures for requesting permission to engage in such activities.

2. Authorities.

A. 18 U.S.C. 203, 205, 208, 209.

B. Executive Order 11222.

C. 43 CFR 20.735-23.

D. Procurement Policy and Procedures Memorandum No. 86-10.

3. Definitions.

A. Outside Work is all gainful employment other than the performance of official duties, including, but not limited to, self-employment, working for another employer, or the management or operation of a private business for profit (including personally owned businesses, partnerships, corporations, and other business entities).

B. Outside Activity means outside work, lectures, consultations, discussions, writings, appearances, and other similar activities.

C. Active Proprietary Management, as used in relation to outside work, refers to a business affiliation in which ownership is coupled with responsibility for day-to-day management efforts in making decisions, supervising operations, dealing with the public, and otherwise discharging essential tasks in the direction of the business.

D. Sensitive Nature means a job the duties and responsibilities of which:

(1) Require or authorize the individual to formulate, determine, or influence the policies of the organization; or

(2) create a substantial appearance of conflict of interest with the employee's official Government duties.

4. Policy. Outside work is permitted to the extent that it does not prevent a regular employee from devoting his or her primary

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interest, talents, and energies to the accomplishments of his or her work for MMS or create a conflict or apparent conflict between the private interests of a regular or special Government employee and the employee's official responsibilities.

5. General Conditions Relating to Outside Work.

A. The principal constraints affecting the approval of outside work or activity are:

(1) All outside work or activity must be performed wholly outside official duty hours or while on authorized leave.

(2) No outside work or activity may involve the contribution of time or services of other Federal employees during their official duty hours, nor the use of Government funds, facilities, materials, or information which is not available to the public or will not be made available on request.

B. Any outside work performed during official duty hours must be charged against the employee's annual leave.

(1) It is the Department's policy that leave without pay shall not be granted for the purpose of private employment, with the exception of service with non-Federal public or quasi-public organizations.

(2) Arrangements may be made to adjust an employee's work schedule to accommodate outside work, but only if:

(a) The changes will not interfere appreciably with the accomplishment of the individual's official duties;

(b) are in the best interest of the MMS; and

(c) will not result in additional costs for personal services.

(3) Abuse of leave privileges to engage in outside work shall be treated as an interference with official performance.

C. Prior management approval must be obtained in those rare situations, generally involving extended periods of illness or confinement, where an employee wishes to engage in outside employment during a period of sick leave.

D. Activities which are not acceptable:

(1) An employee is not permitted to engage in any outside work or have any employment affiliation which might encourage,

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on the part of the members of the general public, a reasonable belief that a conflict of interest exists. Outside work must not be in conflict with the employee's official duties and must not be, or appear to be, in conflict with the mission of the MMS.

(2) An employee may not receive or solicit compensation for services rendered:

(a) By the employee or another on behalf of another person;

(b) before a Government Agency, in connection with a particular matter in which the United States is a party or has an interest;

(c) except as provided by law (e.g., military reserve duty or National Guard duty).

(3) An employee may not receive any salary or anything of monetary value from a private source for services to the Government, nor may an employee accept a gift, favor, payment of expenses, or other things of monetary value under circumstances which may result in or appear to be a conflict of interest.

(4) Except in the discharge of his or her official duties, an employee may not represent anyone else before a court or Government Agency, in any particular matter in which the United States is a party or has an interest, except where provided by law.

(5) An employee will not be permitted to be involved in active proprietary management of a business closely related to the official work of the employee.

(6) An employee will not be authorized to perform outside work that would tend to influence impartial judgment on any matters coming before the employee in the course of his or her official duties; e.g., working with contracting firms that may bid for contracts with the MMS.

(7) An employee will not be authorized to perform outside work that would tend to impair the employee's mental or physical ability to perform his or her Government responsibilities in an acceptable manner.

(8) Employees may not perform outside work of a sensitive nature for a person or enterprise that conducts operations or activities that are regulated by the Department or that can be substantially affected by the performance or nonperformance of the employee's official duties.

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6. Employment for or by Foreign Governments. Requests for approval to negotiate an assignment with a foreign government or contract with a private firm to perform overseas work should be submitted to the Assistant Ethics Counselor, in advance of entering into any contract or agreement. Such negotiations often occur in the cases of a reemployed annuitant whose expertise is sought because of international reputation achieved during MMS or Government careers. The combination of MMS employment, either with assignments for a private contractor to perform work for a foreign government or with the foreign government itself, is incompatible and, therefore, prohibited. Furthermore, Article I, Section 9, Clause 8 of the Constitution of the United States provides: "No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."

7. Teaching, Lecturing, and Writing.

A. An employee is encouraged to engage in teaching, lecturing or writing that is not prohibited by statute, Executive order, Office of Personnel Management (OPM) regulations, or this chapter.

B. An employee shall not teach, lecture, or write using information obtained because of his or her Government employment, except when that information has been, or on request will be, made available to the general public.

C. An employee shall not teach, lecture, or write to prepare a person or class of persons for an examination given by the OPM or the Board of Examiners for the Foreign Service.

D. Full-time MMS personnel who engage in teaching, if listed in curriculum catalogs, should be shown as members of the MMS and not as faculty members.

E. Scientific papers are generally not to be coauthored and published under an MMS contractual arrangement, as this constitutes the appearance of a conflict of interest.

(1) However, it is sometimes in the Government's best interest to have its most knowledgeable experts participate in the coauthorship of such publications, in the selection process, and perform certain contracting officer's technical representative (COTR) functions. Program and project officers who are involved in such a situation should discuss the matter with the contracting officer as soon as possible. In addition, the contracting officer

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shall obtain written certification from the COTR (approved by his or her supervisor) that:

(a) The employee will not obtain financial gain or benefit beyond his or her Federal salary and benefits as a result of the coauthorship.

(b) The COTR shall not have authority to authorize payment under the contractual or assistance instrument.

(c) There is no other known research being conducted in the specific area described in the contractual arrangement/agreement.

(2) The contracting officer, following the procedures outlined in Policy and Procedures Memorandum No. 86-10, Coauthorship of Scientific Publications, dated May 19, 1986, will immediately contact the Ethics Staff. If agreement is reached to proceed with the procurement, the official procurement file shall be documented as follows:

"The possible conflict of interest has been reviewed in accordance with 43 CFR 20.735-6(b)(2), 'Employee Responsibility and Conduct,' and it has been determined that no violation exists."

(3) The contracting officer shall document the file to reflect the fact that his or her supervisor is aware that the same individual reviewing for funding, serving as COTR, and coauthoring has the appearance of conflict of interest. The official procurement file shall certify that coauthorship has been determined to be in the Government's best interests.

(4) Source selection shall be fully documented, whether it is based on competition, noncompetitive, limited competition, or a truly unique unsolicited proposal. Any necessary justification, for other than full and open competition, must meet the criteria set forth in Policy and Procedures Memorandum No. 86-08, Competition in Contracting. In addition, justification for all such requirements, regardless of dollar level, shall have the written concurrence of the Competition Advocate who is currently the Chief, Procurement Policy Branch.

8. Advance Authorization to Engage in Outside Work or Activity.

A. A Request to Engage in Outside Work or Activity, Form MMS-1510 (Illustration 1), is initiated by the employee and submitted to his or her first line supervisor.

B. The supervisor evaluates the request based on the conditions printed on the reverse of the form.

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C. If all criteria for authorization are met, the request is certified and forwarded to the Division Chief or other appropriate management official for concurrence, and then to the Ethics Staff for procedural review.

D. If it has been determined that permission should be withheld, the supervisor and/or management official should notify the employee of his or her concerns. The reasons for denying authorization should be documented in writing and forwarded, along with the employee's request, to the Ethics Staff for final determination.

(1) The Ethics Staff will notify the employee, in writing, of the final determination.

(2) In cases where authorization is denied, the employee may file a grievance in accordance with the procedures in Departmental Manual 771.

E. Once authorized, the original request is returned to the employee with copies to the management official and to the employee's official personnel and confidential folders.

F. All requests should be processed in an expeditious manner. No more than 2 weeks should elapse from the time the employee submits the request until it reaches the Ethics Staff.

G. Requests to engage in nonofficial expression should be made on Form MMS-1983, "Notice of Intention and Certification of Compliance, Nonofficial Expression."

9. Sanctions. Employees found in violation of any of the above procedures may be subject to appropriate administrative action ranging from oral warning to removal from the Federal Service.

**UNITED STATES
DEPARTMENT OF THE INTERIOR
Minerals Management Service
REQUEST TO ENGAGE IN OUTSIDE WORK OR ACTIVITY**

PART A — FOR COMPLETION BY EMPLOYEE

1. EMPLOYEE'S NAME & LOCATION:
(GIVE OFFICE, DIVISION, BRANCH)

2. MMS POSITION TITLE & GRADE:

3. NAME & ADDRESS OF OUTSIDE ORGANIZATION:

4. HOURS PER WEEK OF OUTSIDE ACTIVITY:

5. BRIEF EXPLANATION OF OUTSIDE WORK OR ACTIVITY. DESCRIBE ANY INVOLVEMENT WITH:
1) OTHER DOI BUREAUS, 2) OTHER GOVERNMENT AGENCIES, 3) ENERGY-RELATED FIRMS, IF
APPLICABLE, AND 4) DURATION OF OUTSIDE ACTIVITY. (USE SEPARATE SHEET IF NECESSARY)

6. CERTIFICATION:

I CERTIFY THAT THE WORK OR ACTIVITY OUTLINED ABOVE DOES NOT POSE A REAL OR APPARENT CONFLICT OF INTEREST WITH MY REGULAR DUTIES AND THAT IT WILL BE PERFORMED ONLY IN A NONDUTY STATUS, WITHOUT USE OF GOVERNMENT FACILITIES, EQUIPMENT, SUPPLIES, OR OFFICIAL INFORMATION WHICH IS NOT AVAILABLE TO THE PUBLIC, AND WITHIN THE RESTRICTIONS GIVEN IN PART 20, TITLE 43 OF THE CODE OF FEDERAL REGULATIONS (CFR).

DATE: _____ EMPLOYEE
SIGNATURE: _____

I CERTIFY THAT I HAVE REVIEWED THE ABOVE STATEMENT AND CERTIFY THAT THE WORK OR ACTIVITY OUTLINED ABOVE DOES NOT POSE A REAL OR APPARENT CONFLICT OF INTEREST WITH THE EMPLOYEE'S OFFICIAL DUTIES. FURTHER, I CERTIFY THAT I WILL NOT ASSIGN ANY FUTURE DUTIES WHICH COULD PLACE THE EMPLOYEE IN VIOLATION OF THE LAW. SHOULD A SITUATION ARISE WHERE CONFLICTING ASSIGNMENTS MUST BE MADE, THE EMPLOYEE WILL BE GIVEN PRIOR NOTIFICATION AND COUNSELED IN THE STEPS WHICH MUST BE TAKEN TO REMAIN IN COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS.

DATE: _____ SUPERVISOR
SIGNATURE: _____

PART B — REVIEW (CONDITIONS SPECIFIED 43 CFR 20.735-23)

1. CONCURRENCE: (DIVISION CHIEF OR OTHER APPROPRIATE MANAGEMENT OFFICIAL)

DATE: _____ MANAGEMENT
OFFICIAL: _____

2. PROCEDURAL REVIEW: (OFFICE OF ETHICS)

DATE: _____ ETHICS
SPECIALIST: _____

Form MMS-1510 (Aug 1985)

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